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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,214	05/05/2004	Adrianus Josephes van den Nieuwelaar	V0028/300656	9452

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EXAMINER

KUHNS, SARAH LOUISE

ART UNIT PAPER NUMBER

1761

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/840,214

Applicant(s)

VAN DEN NIEUWELAAR ET AL.

Examiner

Sarah L Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 7, 8, 13-16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourdel et al., U.S. Patent 4,810,515.

In regard to claim 2, Bourdel discloses a method of preserving slaughtered birds or parts thereof provided with skin comprising, conveying product carriers through at least a portion of a chilling room (R) wherein each product carrier (3) carries a single slaughtered bird or part thereof and wherein at least some of the slaughtered birds or parts thereof are conveyed through at least a portion of the chilling room in different horizontal planes (T1, T2, T3); chilling each slaughtered bird or part thereof by exposing the slaughtered bird or part thereof to a stream of chilling air in the chilling room; and moistening at least a portion of each slaughtered bird or part thereof by atomization of water, wherein the moistening of each slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof and being maintained on the skin during chilling (column 1, line 43 - column 2, line 36).

In regard to claims 7 and 8, Bourdel discloses the moistening occurring periodically with time intervals in the range claimed by applicant (column 1, lines 51-54).

In regard to claim 13, Bourdel discloses spraying the slaughtered birds or parts thereof prior to chilling (column 3, lines 4-8).

In regard to claims 14 and 15, Bourdel discloses the chilling air temperature being between 3° and -6° C (column 2, lines 53-55).

In regard to claim 16, Bourdel discloses a device comprising a chilling room (R) comprising means for generating a stream of chilling air; a conveyor (2) for conveying product carriers (3) in a conveyance direction and along a conveyor path that extends at least partially through the chilling room (R), wherein each carrier is adapted to carry a single slaughtered bird or part thereof and wherein the conveyor is adapted to convey at least some of the carriers through the chilling room in different horizontal planes (T1, T2, T3); and a spray means (6) for moistening the skin of a slaughtered bird or part thereof and to maintain the water film on the slaughtered bird or part thereof during exposure to the chilling air.

In regard to claim 18, Bourdel discloses the spray means (6) being positioned at a spray station located in the chilling room (R), wherein a slaughtered bird or part thereof is moistened while separated from the stream of chilling air (column 3, lines 36-43).

Claims 2-4, 7, 12, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Veerkamp.

In regard to claim 2, Veerkamp discloses a method of preserving slaughtered birds or parts thereof provided with skin comprising, conveying product carriers through at least a portion of a chilling room wherein each product carrier carries a single slaughtered bird or part thereof and wherein at least some of the slaughtered birds or parts thereof are conveyed through at least a portion of the chilling room in different horizontal planes (see pictures of the equipment on pages 2 and 3); chilling each slaughtered bird or part thereof by exposing the slaughtered bird or part thereof to a stream of chilling air in the chilling room; and moistening at least a portion of each slaughtered bird or part thereof by atomization of water, wherein the moistening of each slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof and being maintained on the skin during chilling (pg. 3).

In regard to claim 3, Veerkamp discloses the slaughter birds being conveyed hanging by both legs during moistening (pg. 3).

In regard to claim 4, Veerkamp discloses the birds being hung by their legs and sprayed from above (pg. 3). Therefore, it would have been expected that some of the water sprayed would enter the abdominal cavity.

In regard to claims 7, Veerkamp discloses the moistening occurring periodically (pg. 3).

In regard to claim 12, Veerkamp discloses assessing the color of the skin of each slaughtered bird or part thereof (pg. 3).

In regard to claim 16, Veerkamp discloses a device comprising a chilling room comprising means for generating a stream of chilling air; a conveyor for conveying product carriers in a conveyance direction and along a conveyor path that extends at least partially through the chilling room, wherein each carrier is adapted to carry a single slaughtered bird or part thereof and wherein the conveyor is adapted to convey at least some of the carriers through the chilling room in different horizontal planes; and a spray means for moistening the skin of a slaughtered bird or part thereof and to maintain the water film on the slaughtered bird or part thereof during exposure to the chilling air (pg. 3).

In regard to claim 18, Veemkamp discloses the spray means being positioned at a spray station located in the chilling room, wherein a slaughtered bird or part thereof is moistened while separated from the stream of chilling air (pg. 3).

Claims 2-4, 7, 13, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Zwanikken et al., U.S. Patent 5,595,066.

In regard to claim 2, Zwanikken discloses a method of preserving slaughtered birds or parts thereof provided with skin comprising, conveying product carriers through at least a portion of a chilling room (14) wherein each product carrier carries a single slaughtered bird or part thereof and wherein at least some of the slaughtered birds or parts thereof are conveyed through at least a portion of the chilling room (14) in different horizontal planes (15); chilling each slaughtered bird or part thereof by exposing the slaughtered bird or part thereof to a stream of chilling air in the chilling room; and moistening at least a portion of each slaughtered bird or part thereof by atomization of

Art Unit: 1761

water, wherein the moistening of each slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof and being maintained on the skin during chilling (column 3, lines 28-37).

In regard to claim 3, Zwanikken discloses the slaughter birds being conveyed hanging by both legs during moistening (column 3, lines 56-57).

In regard to claim 4, Zwanikken discloses the birds being hung by their legs and sprayed from above. Therefore, it would have been expected that some of the water sprayed would enter the abdominal cavity.

In regard to claim 7, Zwanikken discloses moistening the slaughtered bird periodically (column 4, lines 5-7).

In regard to claim 13, Zwanikken discloses spraying the slaughtered birds or parts thereof prior to chilling (column 4, lines 1-7).

In regard to claim 16, Zwanikken discloses a device comprising a chilling room comprising means for generating a stream of chilling air (11); a conveyor for conveying product carriers in a conveyance direction and along a conveyor path (9) that extends at least partially through the chilling room, wherein each carrier is adapted to carry a single slaughtered bird or part thereof and wherein the conveyor is adapted to convey at least some of the carriers through the chilling room in different horizontal planes; and a spray means (10) for moistening the skin of a slaughtered bird or part thereof and to maintain the water film on the slaughtered bird or part thereof during exposure to the chilling air (column 3, lines 28-37).

In regard to claim 17, Zwanikken discloses the spray means (10) being positioned at a spray station located outside the chilling room (figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-4, 7, 8, 9, 11, 12, 14-16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda, U.S. Patent 4,199,958 in view of Bourdel.

In regard to claim 2, Masuda discloses a method of preserving slaughtered birds or parts thereof provided with skin comprising, conveying product carriers (82) through at least a portion of a chilling room (3) wherein each product carrier carries three slaughtered birds or parts thereof and wherein at least some of the slaughtered birds or parts thereof are conveyed through at least a portion of the chilling room in different horizontal planes (81); chilling each slaughtered bird or part thereof by exposing the

Art Unit: 1761

slaughtered bird or part thereof to a stream of chilling air in the chilling room; and moistening at least a portion of each slaughtered bird or part thereof by atomization of water, wherein the moistening of each slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof and being maintained on the skin during chilling (abstract). Masuda does not disclose the carrier only carrying one bird but it was well known in the art to use single carriers, as evidenced by Bourdel which also teaches a method for the preservation of slaughtered poultry as discussed above. It would have been obvious to utilize such a carrier in order to ensure more uniform exposure of the bird to the water spray.

In regard to claim 3, Masuda discloses the slaughter birds being conveyed hanging by both legs during moistening (column 4, lines 50-51).

In regard to claim 4, Masuda discloses the birds being hung by their legs (column 4, lines 50-51) and sprayed from above (2, figure 9). Therefore, as no particular way of spraying is claimed, it would have been expected that some of the water sprayed would enter the abdominal cavity.

In regard to claims 7 and 8, Masuda discloses the moistening occurring at least every 10 minutes (column 4, lines 3-6).

In regard to claim 9, Masuda does not disclose moistening the bird less frequently, the further it is conveyed. However, it would be obvious to do so because the further the bird is conveyed, the more the temperature of the bird drops. This

Art Unit: 1761

reduces the need for moistening and therefore spraying the bird less frequently would prevent useless consumption of water.

In regard to claim 11, Masuda discloses the use of 15 cc of water (approximately 15 grams) to moisten each slaughtered bird or part thereof (column 4, lines 11-14).

In regard to claim 12, Masuda discloses assessing the color of the skin of each slaughtered bird or part thereof (column 8, lines 46-50).

In regard to claims 14 and 15, Masuda discloses the chilling air temperature being between 5° and -3° C (column 4, lines 15-18).

In regard to claim 16, Masuda discloses a device comprising a chilling room (3) comprising means (1) for generating a stream of chilling air; a conveyor (8) for conveying product carriers (82) in a conveyance direction and along a conveyor path that extends at least partially through the chilling room (3), wherein each carrier is adapted to carry three slaughtered birds or parts thereof and wherein the conveyor is adapted to convey at least some of the carriers through the chilling room in different horizontal planes (81); and a spray means (2) for moistening the skin of a slaughtered bird or part thereof and to maintain the water film on the slaughtered bird or part thereof during exposure to the chilling air. Masuda does not disclose the carrier only carrying one bird but it was well known in the art to use single carriers, as evidenced by Bourdel which also teaches a method for the preservation of slaughtered poultry as discussed above. It would have been obvious to utilize such a carrier in order to ensure more uniform exposure of the bird to the water spray.

In regard to claim 18, Masuda discloses the spray means (2) being positioned at a spray station located in the chilling room (3), wherein a slaughtered bird or part thereof is moistened while separated from the stream of chilling air.

In regard to claim 19, Masuda discloses the spray means (2) being positioned along the conveyor path at a location where the conveyance direction reverses (column 3, lines 21-24).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Gutzman et al., U.S. Patent 6,103,286. Allen does not disclose the antibacterial agent comprising lactic acid. Gutzman teaches that lactic acid is widely used with poultry carcasses as a decontaminating agent (column 1, lines 34-36). Therefore, it would have been obvious to use lactic acid as the antibacterial agent in the method of Allen because, as Gutzman teaches, lactic acid has a mild acid taste (column 1, lines 32-34) and is effective in reducing the amount of microorganisms on carcasses when used prior to chilling (column 1, lines 39-42).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Dew, U.S. Patent 4,196,221. Allen does not disclose the water being electrostatically charged. Dew teaches a method that is especially suitable for chilling of poultry that includes spraying water in an electric field (column 3, lines 47-66). It therefore would have been obvious to use electrostatically charged water in the method of Allen in order to reduce the amount of water required for the process while at the same time providing for thorough washing of the animal, as taught by Dew (column 2, lines 34-44).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Allen et al., "Investigation of hygiene aspects during air chilling of poultry carcasses using a model rig," discloses a method of processing poultry comprising spraying and chilling the poultry. Hansen et al., U.S. Patent 3,745,026, discloses a method of chilling carcasses comprising spraying them with a chlorine containing spray and chilling them. McEntee, GB 2 280 093 A, discloses a method of processing poultry in which the poultry is passed through an air chilling room where cold water is periodically sprayed on to the surface of the poultry. Szentivany et al., DE 3727079 A, discloses a chilling process for use in processing poultry. Pfeningber, DE 3311437 A, disclose a method of processing poultry in which water is sprayed on the poultry and then cold air is blown on the poultry. Beniers, NL 9301244 A, discloses a method in butchered meat products are transported through a cool room and before and/or during the transport a liquid is sprayed over the products. Dillon, U.S. Patent 3,729,773, discloses a process for washing and cooling fowl for human consumption.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK



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